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NOTES OF CASES.

Equitable Title in Action of Ejectment—Code of Virginia § 2741.—It has recently been decided in the Circuit Court of Appeals, in Clinchfield Coal Corporation *v.* Steinman, 223 Fed. 743, which arose under § 2741 of the Virginia Code, that in an action of ejectment the plaintiff may show a common source through an equitable title. The court said: "In Marback *v.* Holmes, 105 Va. 178, the rule of common source was applied where it was shown by the record of a suit to which the defendant was a party that he had set up the equitable claim of specific performance against his father, from whom the plaintiff derived title. The defendant, however, relies upon the later case of Charles *v.* Hurley, 110 Va. 27, as overruling the earlier case, and holding that the rule of common source does not apply where the defendant claims under an equitable title. We do not think the decision bears that construction. The main fact in the case was that the testimony relied on to prove the common source was altogether parol. The legal conclusion was that parol evidence alone was not sufficient to show the common source, because the Virginia statute requires a writing and excludes parol testimony as proof of such an equitable title as would defeat an action by a vendor or one holding the legal title under him. This we venture to think is the plain limitation of the decision. Nothing short of the clearest language would warrant this court in concluding that the Virginia court intended to overrule its former decisions and establish a new rule inconsistent with precedent and reason. The rule contended for by the defendant would mean that, if A bought from B, he could not recover from C, who had subsequently entered under a contract to purchase the land from B, without tracing B's title back to the state."

Acknowledgment of Deeds—Contents of Certificate.—Code Va. 1887, § 2500, authorizing the clerk of court to take in his office acknowledgments of deeds, does not require that the acknowledgment shall recite that it has taken in the clerk's office, and where an acknowledgment does not affirmatively show that fact, it will be presumed that the clerk did his duty and took the acknowledgment in his office, and can not be impeached by his testimony that he sometimes took acknowledgments out of his office. Clinchfield Coal Corporation *v.* Steinman (C. C. A.), 223 Fed. Rep. 743.

The court said: "The statute does not require that the acknowledgment should contain the statement that it was taken in the clerk's office; and the presumption is that the officer did his duty and took it in his office. Hassler's Lessee *v.* King, 9 Gratt. 115; Peyton *v.* Carr's Ex., 85 Va. 456. Testimony of the clerk that he sometimes

took acknowledgments out of his office was clearly inadmissible. Property rights should not be imperilled by the mere possibility that the titles were not executed as required by law. Besides in Virginia an officer is not allowed to impeach his own certificate. Hochman *v.* McClanahan, 87 Va. 39, 12 S. E. 230."

Principal and Surety—Right of Surety to Set-Off.—Under Code Va. 1904, § 3298, authorizing a surety to assert as a set-off any claim which his principal would have had against plaintiff, suing the surety, a surety of plaintiff and a defendant may, when sued with defendant for a debt due from defendant to plaintiff, assert as a set-off a claim due from plaintiff to defendant, though the transactions out of which the debts arose are distinct, and though defendant is bankrupt. Under this statute, a surety of two contractors with the government for distinct public works, conditioned on the contractors' faithfully executing their contracts, may, when sued by one contractor for a debt due from the other contractor, set up as a set-off a claim due the latter contractor from the former contractor, in the absence of anything to show that there are persons asserting claims for supplies and materials protected by the bond of the latter contractor, or that there are such claims to be paid. United States *v.* Richardson (C. C. A.), 223 Fed. Rep. 1010, citing Burks on Plead. & Prac. 435; Allen *v.* Hart, 18 Gratt. (Va.) 722; Tidewater Quarry Co. *v.* Scott, 105 Va. 160, 52 S. E. 835, 115 Am. St. Rep. 864, 8 Ann. Cas. 736; Wartman et al. *v.* Yost, 22 Gratt. (Va.) 595; Edmunds' Assignee *v.* Harper, 31 Gratt. (Va.) 637.

Injunction—Against Enforcement of Statute—Remedy at Law.—The threatened enforcement, by the proper officers, of Va. Code, Supp. 1910, §§ 1104, 1105, requiring foreign corporations doing business in the state to obtain a license, will not be enjoined at the instance of a corporation which asserts that its business within the state is wholly interstate, where it is not claimed that the statute is unconstitutional, but only that it may be enforced in such a way as to violate the commerce clause of the federal constitution, since the corporation has an adequate remedy at law in its right to raise the constitutional question if proceedings are taken against it, or to recover the license fee if it pays it under protest. Dalton Adding Machine Co. *v.* State Corporation Commission, 236 U. S. 699, 35 Sup. Ct. 480.